

EXHIBIT B

Original Transcript

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GABRIELE E. VERROCCHIO,

Plaintiff(s),

vs.

Index No.3:19-CV-01376

TJM-DEP FEDERAL EXPRESS
CORPORATION,

Defendant(s).

~~~~~

**DEPOSITION OF**

**ALAN C. WINSHIP**

January 6, 2011

10:09 a.m.

40 Gardenville Parkway  
Suite 200,  
West Seneca, New York 14224

DEBORAH DELELYS, Court Reporter and Notary Public



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Alan C. Winship

January 6, 2011

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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GABRIELE E. VERROCCHIO,

Plaintiff(s),

-against-

Index No. 3:19-CV-01376

TJM-DEP FEDERAL EXPRESS CORPORATION,

Defendant(s).  
-----

DEPOSITION OF:

ALAN C. WINSHIP

HELD: THURSDAY, JANUARY 6, 2011

LOCATION: WEST SENECA, NEW YORK

REPORTED BY: DEBORAH DELELYS

  
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1 Alan C. Winship

2 January 6, 2011

3

4  
5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF NEW YORK

7  
8 GABRIELE E. VERROCCHIO,

9 Plaintiff(s),

10  
11 -against- Index No. 3:19-CV-01376

12  
13 TJM-DEP FEDERAL EXPRESS CORPORATION,

14 Defendant(s).  
15

16  
17 This is the DEPOSITION of ALAN C.  
18 WINSHIP herein, held at WINSHIP & ASSOCIATES,  
19 located at 40 GARDENVILLE PARKWAY, SUITE 200,  
20 WEST SENECA, NEW YORK 14224, commencing at 10:09  
21 A.M., on THURSDAY, JANUARY 6, 2011, before  
22 DEBORAH DELELYS, Court Reporter and Notary  
23 Public in and for the State of New York.  
24  
25

1  
2 Alan C. Winship

January 6, 2011

3

1  
2 APPEARANCES:

3  
4 FEYI O. GAJI, ESQ.  
5 36 Oak Street  
6 Binghamton, New York 13905  
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25  
Appearing for the Plaintiff

10 FEDERAL EXPRESS CORPORATION  
11  
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25  
LEGAL DEPARTMENT  
BY: SARAH F. HENRY, ESQ.  
3620 Hacks Cross Road  
Building B, 3rd Floor  
Memphis, Tennessee 38125-8800  
Appearing for the Defendant

Alan C. Winship

January 6, 2011

4

1

A. Winship

2

THIS IS THE DEPOSITION of ALAN C.

3

WINSHIP herein, on THURSDAY, JANUARY 6, 2011,  
before DEBORAH DELELYS, a Court Reporter and  
Notary Public in and for the State of New York.

6

\* \* \* \* \*

7

ALAN C. WINSHIP

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called as the witness, hereinbefore  
named, being first duly cautioned and sworn or  
affirmed by DEBORAH DELELYS, the Court Reporter  
and Notary Public herein, to tell the truth, the  
whole truth, and nothing but the truth, was  
examined and testified as follows:

EXAMINATION BY

MS. HENRY:

17

Q Would you please state your name for  
the record.

19

A Alan C. Winship.

20

Q Would you please state your address  
for the record.

22

A 40 Gardenville Parkway, Suite 200,  
West Seneca, New York 14224.

24

Q Mr. Winship, we're here on January the  
6th of 2011, and you're here pursuant

Alan C. Winship

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5

1 A. Winship

2 to Subpoena, correct?

3 A That's correct.

4 Q And the Subpoena instructed you to  
5 have all of the records and the  
6 documents that you relied on in  
7 generating your opinions in this case.

8 Do you have those with you today?

9 A I do.

10 Q Okay. I noticed you have printed off  
11 a list of papers that I'm not familiar  
12 with. One of them obviously looks  
13 like your resume.

14 May I look at whatever documents  
15 you're holding?

16 A Sure. It's the two reports I've  
17 generated.

18 Q Have you made any changes to the  
19 reports that you generated between  
20 what you produced to Mr. Gaji in this  
21 case and what you're holding today?

22 A No.

23 Q If you wouldn't mind, since I've got a  
24 copy of those, I prefer to have you  
25 look at my copy just to be sure there

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4 A Sure.

5 Q Just as a formal legal matter I'd  
6 rather you look at what I've been  
7 given just to make sure we're all on  
8 the same page.

9 A That's fine.

10 Q And understand, then, this deposition  
11 has been rescheduled twice. It was  
12 originally scheduled for December the  
13 1st and was cancelled due to discovery  
14 issues, is that your awareness?

15 A My understanding is it's been  
16 . cancelled three times.

17 Q Okay. Was it scheduled before the  
18 December 1st date in your  
19 recollection?

20 A You know, I don't have all the dates  
21 in front of me.

22 Q Okay. Do you remember it being  
23 scheduled on December 1st and being  
24 cancelled?

25 A Yes.



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1 A. Winship

2 Q Okay. And do you remember it being  
3 rescheduled for December the 28th?

4 A Yes.

5 Q And you remember that one being  
6 cancelled due to weather constrictions  
7 on my part?

8 A Yes.

9 MS. HENRY: Okay. I'm  
10 go to pass you what is  
11 going to be marked as  
12 Exhibit 1.

13 (At which time, Exhibit 1, Copy of  
14 original Vocational Evaluation, was  
15 marked for identification.)

16 BY MS. HENRY:

17 Q Mr. Winship, you are being passed  
18 what's been marked Exhibit 1, which  
19 looks to be a copy of your report.  
20 Would you review that and verify that  
21 that is a copy of your original  
22 vocational evaluation.

23 A Yes, it is.

24 Q Okay. And the first sentence of your  
25 report says that you were, or you are

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1 A. Winship

2 rendering a vocational evaluation and  
3 opinion regarding Mr. Verrochio's  
4 earning capacity.

5 Is that what you intended to do with  
6 this vocational evaluation that you  
7 conducted?

8 A Yes.

9 Q Are these -- is this the only type of  
10 opinion that you were hired to render  
11 as an expert in this particular  
12 lawsuit?

13 A I was hired to render an opinion,  
14 that's a standard sentence in all of  
15 my reports. I was hired to render an  
16 opinion with regard to Mr.  
17 Verrochio's capacity for employment,  
18 and if he is employable to provide an  
19 opinion with regard to his earning  
20 capacity.

21 Q Okay. So you're not here today to  
22 render any legal opinions; is that  
23 correct?

24 A That's correct.

25 Q And what was provided to me for you,

Alan C. Winship

January 6, 2011

9

1 A. Winship

2 attached a copy of your resume, and I  
3 believe the last sheets of that  
4 Exhibit 1. If you wouldn't mind  
5 turning to the last four sheets, which  
6 should be your resume.

7 A Actually the resume's kind of stapled  
8 in with some other materials in my  
9 copy, it's not the last two pages.  
10 There's some vocational references  
11 after it.

12 Q Okay. So it's the last two pages?

13 A No, it's not.

14 Q I'm sorry. The second to last two  
15 pages?

16 A Yes. The vocational references just  
17 came apart, by those were the last two  
18 pages. My resume was the third and  
19 fourth last page.

20 Q Is your resume two pages long?

21 A Yes, it is.

22 Q Okay. Actually, if you'll keep them  
23 in a collective exhibit. I hate to be  
24 lawyerly with you, but it's a  
25 collective exhibit and the order. Are

Alan C. Winship

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10

1 A. Winship

2 there any changes that need to be made  
3 to this resume that was produced?

4 A No.

5 Q Okay. Will you describe what your  
6 day-to-day practice is at Winship &  
7 Associates?

8 A Well, my day-to-day practices is  
9 fairly multi-faceted. I do some legal  
10 consulting such as this matter where I  
11 render an opinion on employability and  
12 earning capacity. I prepare life care  
13 plans in litigated cases. I do  
14 Medicare set-asides. I'm a licensed  
15 mental health counselor as well as a  
16 certified rehabilitation counselor.  
17 My practice consists of working with  
18 individuals who have multiple types of  
19 disabilities, physical learning  
20 disabilities, psychological  
21 impairments and assisting them with  
22 adjustment issues and looking into how  
23 their impairments effect their  
24 capacity for employment. We do  
25 testing. We do counseling. I provide

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1 A. Winship  
2 case management services for the  
3 Veteran's Administration. I do what  
4 they call diagnostic vocational  
5 evaluations, which is a series of  
6 testing and career counseling with our  
7 state education department, so  
8 numerous types of things. With regard  
9 to my license in mental health I do  
10 counseling primarily with chronic pain  
11 population, anxiety adjustment issues,  
12 anger issues and so forth.

13 Q Okay. You also provided for this case  
14 the two pages in Exhibit 1, prior to  
15 your CVR, a list of cases that you  
16 have worked on within the last ten  
17 years?

18 A I did, yes.

19 Q Okay. And would you agree to provide  
20 the full name of all of these cases so  
21 they can be reviewed? I personally  
22 can't look these up with this one  
23 name. If you would agree to  
24 supplement the list of cases that you  
25 have testified in to include the full



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1 A. Winship

2 name and the docket number of the case  
3 as it was physically provided? Would  
4 you agree to do that at some later  
5 date?

6 A Well, quite frankly, I wouldn't even  
7 know how to begin to do that. I've  
8 never been asked for anything beyond  
9 what I've provided.

10 Q You wouldn't have any documents that  
11 would have what's called the style of  
12 the case, that would have both of the  
13 parties names?

14 A I don't. If there's a method --  
15 perhaps Mr. Gaji could help me with  
16 that if there's a method of  
17 researching and looking it up, I'd be  
18 more than happy to.

19 Q Okay. On any of the -- were all of  
20 these cases in state court?

21 A The -- I believe the only one that  
22 isn't state court is the Bobak matter  
23 back in '06, which was a state court  
24 in Pennsylvania.

25 Q Okay. So it's a state court case,

Alan C. Winship

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1 A. Winship

2 just not in New York?

3 A That's correct.

4 Q The rest of the cases appear to be  
5 state court cases in New York?

6 A That's correct.

7 Q And what is the Raskin-Weber Jillian  
8 that says Court of Claims, is that  
9 state court as well?

10 A That's a state court, yes.

11 Q Okay. Were any of these cases  
12 Americans With Disabilities Act cases?

13 A No.

14 Q Okay. Have you ever testified or  
15 given expert testimony in Americans  
16 with Disabilities Act cases?

17 A Beyond four years?

18 Q Ever. I mean, this is a list of all  
19 the cases that you provided expert  
20 testimony in the past ten years,  
21 correct?

22 A That's correct.

23 Q And none of them are ADA cases,  
24 correct?

25 A That's correct.

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14

1 A. Winship

2 Q So have you ever provided any  
3 testimony in an ADA case before this  
4 one that we're here for today?

5 A I would need to -- I don't have a  
6 record before that of the four-year  
7 period, I delete as they come across.  
8 I've been involved in ADA cases,  
9 whether any of them have gone to  
10 court, I don't know off the top of my  
11 head.

12 Q When you say a four-year period, are  
13 you taking about four years prior to  
14 this?

15 A No. I'm talking about my recollection  
16 before the four-year period noted on  
17 the letter.

18 Q Okay. So you're talking about the  
19 four-year period before this list of  
20 all the cases that -- for the previous  
21 ten years?

22 A Well, four-year or longer.

23 Q Okay. But it would be beyond the  
24 scope of this ten-year period that  
25 you've outlined in your letter,

Alan C. Winship

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1 A. Winship

2 correct, is that what you're saying?

3 A Well, I only outlined a four-year  
4 period of cases that I testified on.

5 Q Okay. It says -- the first paper of  
6 -- you are correct. You're correct.

7 I stand corrected. I saw the past ten  
8 years and this is the past four years.  
9 So you're saying that you don't have a  
10 recollection of any ADA cases in the  
11 past beyond this past four years?

12 A That I've testified on.

13 Q Okay. And would you agree to  
14 supplement that information to your  
15 attorney for this previous ten years?

16 MR. GAJI: I don't  
17 understand the question.

18 MS. HENRY: Let me  
19 rephrase. Will you agree  
20 to supplement the  
21 materials provided to  
22 include any ADA cases in  
23 which you have testified  
24 to in the past ten years?

25 MR. GAJI: Objection.

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1 A. Winship

2 MS. HENRY: Hat's your  
3 objection?

4 MR. GAJI: It's beyond  
5 the scope of FRCP.

6 BY MS. HENRY::

7 Q We'll put that to the magistrate then,  
8 but the request is on the table. Are  
9 you familiar with the legal standards  
10 under the Americans With Disabilities  
11 Act?

12 A I am.

13 Q Okay. And how are you familiar with  
14 the legal standards under the ADA?  
15 How did you become familiar with those  
16 standards?

17 A I've attended seminars pertaining to  
18 the ADA and I've done training  
19 pertaining to the ADA with employers.

20 Q Are you familiar with the term  
21 reasonable accommodation within the  
22 legal context of the Americans With  
23 Disabilities Act?

24 A I am.

25 Q Okay. And your knowledge, would that

Alan C. Winship

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1 A. Winship

2 require an employer to change any of  
3 the essential functions of the  
4 position?

5 A It would not.

6 Q In your opinion, would that require an  
7 employer to create a new position for  
8 an employee that could no longer  
9 perform the essential functions of  
10 this previous position?

11 A It would not require that, no.

12 Q In your opinion, would the ADA require  
13 an employer to create a new job for a  
14 displaced employee?

15 A It would not require it, no.

16 Q Okay. As an employee -- in your  
17 opinion, is an employee required to  
18 request or ask for an accommodation?

19 A The accommodation is a dual -- it's a  
20 dialogue, it could be initiated by the  
21 employer or the employee.

22 Q Let me rephrase my question. Is an  
23 employee, in your opinion, required to  
24 request an accommodation under the  
25 ADA?

Alan C. Winship

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18

1 A. Winship

2 A Yes. The onus is on them.

3 Q What information in generating your  
4 report did you have about Federal  
5 Express's TRW or temporary return to  
6 work program?

7 A I don't know that there was anything  
8 in the records that I have with regard  
9 to the TRW program.

10 Q Okay. Are you aware that Mr.  
11 Verrucchio was being examined to return  
12 to work not as an courier, but under  
13 FedEx's TRW program?

14 A I am.

15 Q And are you familiar with the  
16 essential functions of a courier at  
17 Federal Express?

18 A Yes.

19 Q Have you seen any documentation that  
20 describes the essential functions?

21 A No. I don't believe I have a job  
22 description.

23 Q Okay. Is it your intent to testify in  
24 this case, as to a legal opinion, as  
25 to whether FedEx complied with any of

Alan C. Winship

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1 A. Winship

2 the ADA requirements?

3 A I think we've already discussed the  
4 fact that I'm not going to provide a  
5 legal opinion.

6 Q Okay. In your report -- do you need a  
7 minute?

8 A No. Go ahead.

9 Q On the first page of your report you  
10 say that you evaluated Mr. Verrochio  
11 on August the 26th of 2010; is that  
12 correct?

13 A Yes.

14 Q And when you said you evaluated him,  
15 what specifically did you do with Mr.  
16 Verrochio that day?

17 A I took a history from him and reviewed  
18 medical records and discussed the  
19 medical records.

20 Q Have you read Mr. Verrochio's  
21 deposition that was given in this  
22 case?

23 A I don't believe I have his deposition,  
24 no.

25 Q Have you read a deposition of a

Alan C. Winship

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20

4 A No.

5 Q Have you spoken to anyone at Federal  
6 Express that was involved in this case  
7 at all other than myself today?

8           A        No. I'm sure you're aware that I  
9                    don't have authorization to speak with  
10                  anybody at Federal Express.

11 Q How long would you estimate your  
12 evaluation of Mr. Verrochio was?

13 A In the neighbourhood of three hours.

14 Q Did you perform any medical tests on  
15 him?

16 A No. I'm not a medical provider.

17 Q On page seven of your report, the  
18 second paragraph from the bottom,  
19 you're discussing Gary Williams' note  
20 that you reviewed in this case.

21 And Mr. Williams' note says, in the  
22 first sentence in the paragraph,  
23 Mr. Williams' most recent  
24 correspondence is dated July 22nd,  
25 2010, at which time Dr. Williams



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1 A. Winship

2 noted, I reviewed the job descriptions  
3 which you've sent. I have not been  
4 able to locate this particular  
5 document.

6 Can you locate it in the files that  
7 you were given to review in this case,  
8 this particular document?

9 A. (Witness indicating.)

10 MS. HENRY: And he has  
11 just shown me the letter  
12 from July 22, 2010, and  
13 it's a letter to Mr. Gaji  
14 from Dr. Gary Williams,  
15 and I'd like to make this  
16 Exhibit Number 2 to the  
17 deposition. We'll get a  
18 copy of it and give you  
19 your original back.

20 THE WITNESS: Sure.

21 From Mr. Gaji to Dr. Gary  
22 Williams, was marked for  
23 identification.)

24 BY MS. HENRY:

25 Q Mr. Winship, on page ten of your

Alan C. Winship

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22

1 A. Winship

2 report under the employment history  
3 section, the first paragraph ends by  
4 saying, Mr. Verrochio's personnel file  
5 from FedEx was reviewed.

6 I'm going to pass you what has been  
7 produced to me by Mr. Gaji as  
8 represented to be the personnel  
9 records that were produced to you.

10 MR. GAJI: Which were  
11 produced by you to us.

12 MS. HENRY: Fine. If  
13 we could mark this as  
14 Exhibit 3 before I produce  
15 it to the witness.

16 (At which time, Exhibit 3, Mr.  
17 Verrochio's personnel file, was  
18 marked for identification.)

19 BY MS. HENRY:

20 Q If you will -- I realize it's a large  
21 amount of documents. If you would  
22 review that briefly and let me know if  
23 those appear to be the documents that  
24 you considered in evaluating Mr.  
25 Verrochio's personnel file for this

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23

1 A. Winship

2 report.

3 A Again, it appears to be. Again, it's,  
4 you know, my records and your records  
5 are both about two inches thick, so I  
6 would assume that they're consistent.

7 Q But those look familiar, like things  
8 that were given to you?

9 A Yes, certainly. The records would  
10 appear to be the same.

11 Q Okay. Thank you. On page eleven of  
12 your report, you have evaluated the  
13 job duties performed by a route  
14 delivery driver DOT-292.353-010.  
15 Where did you get this particular job  
16 duty?

17 A The --

18 MR. GAJI: Could you  
19 describe that again?

20 MS. HENRY: Can the  
21 court reporter read it  
22 back?

23 MR. GAJI: For the  
24 record, Mr. Kilker is here  
25 now.

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24

1 A. Winship

2 (Whereupon, the above-requested  
3 question was then read by the  
4 reporter.)

5 THE WITNESS: The  
6 dictionary of occupational  
7 titles.

8 BY MS. HENRY:

9 Q Did you have a copy of that particular  
10 occupational title from the dictionary  
11 here with you here today?

12 A A copy of it, no. I have a copy --  
13 the DOT is here.

14 Q Is this job stipulation in that DOT?

15 A Yes.

16 Q Okay. I would like to make a copy of  
17 that from the DOT, the fourth exhibit.  
18 We can file that exhibit. We'll get a  
19 copy of that and file it. The next  
20 sentence or the bottom sentence says  
21 exert force of twenty to fifty pounds  
22 occasionally, ten to twenty-five  
23 pounds frequently or up to ten pounds  
24 constantly. Is that something that  
25 you generated from this DOT title?

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25

1

A. Winship

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A Yes. Everything listed under the transferable skills under the physical demands division, this whole section comes out of the DOT, it describes that job as it's performed generally in the economy, the national economy.

3

4

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Q Okay. On page twelve of your report there's a table and the sentence above the table says, during the course of his past employment Mr. Verrochio has demonstrated the following aptitudes. Where did you generate his aptitudes and the percentile rank of these particular aptitudes for this report?

A The aptitudes and the temperament factors are also from the DOT or the classification of jobs.

Q And as a late filed exhibit, which would be Exhibit Number 5, I would like to have a copy of the documentation that you have included in your report from whatever source, I guess it's the DOT or classification to review that. It also says on page

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6 A That is a computerized analysis of, in  
7 this case, the only occupation that  
8 Mr. Verrochio has performed within the  
9 past fifteen years, and it looks at  
10 what other occupations he may be able  
11 to perform using the type of skills  
12 and temperament factors and aptitudes  
13 that he's developed during the course  
14 of performing the semi-skilled  
15 delivery job.

16 Q And the next sentence says, Certain  
17 assumptions were made regarding  
18 Mr. Verrochio's residual functioning  
19 capacity and ability based on medical  
20 records reviewed and his past work  
21 history. Before I ask you about that  
22 particular question, I'm going to go  
23 ahead and get the rest of the  
24 information that you were provided  
25 made as an exhibit to the deposition.



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27

1 A. Winship

2

3 MS. HENRY: This next  
4 packet is entitled wage  
5 earnings and could I have  
6 this marked as Exhibit 6,  
7 please.

8 (At which time, Exhibit 6, Wage  
9 Earnings, was marked for  
10 identification.)

11 BY MS. HENRY:

12 Q And again, I'm going to ask you -- I'm  
13 going to produce to you what was  
14 produced to me as the information that  
15 was given to you as Mr. Verrochio's  
16 wage information from Federal Express.  
17 And if you would just briefly review  
18 that and see if that looks familiar  
19 and see if that looks like the  
20 information that you were provided in  
21 order to generate your opinions for  
22 this report.

23 A It does.

24 Q Okay. Thank you.

25 MS. HENRY: The next

Alan C. Winship

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1 A. Winship  
2 exhibit is going to be  
3 Exhibit 7, and this is a  
4 packet of medical records  
5 that was produced to me by  
6 Mr. Gaji as a complete  
7 packet of the medical  
8 records that you were  
9 given to review on Mr.  
10 Verrochio in generating  
11 your opinions in this  
12 case.

17 MS. HENRY: This is  
18 marked as Exhibit 7.

19 And just for the  
20 record, I'll go through.  
21 One is the July 20, 2007  
22 first choice evaluation  
23 independent medical exam  
24 by Dr. Kim.

25 Mr. Gaji, there are a



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Alan C. Winship

January 6, 2011

29

1 A. Winship  
2 lot of these reports. Can  
3 we not stipulate that this  
4 is a copy of exactly what  
5 you sent me?

6 MR. GAJI: We just want  
7 to make sure that nothing  
8 is left out that may  
9 become a problem in the  
10 future.

11 MS. HENRY: Okay. I'll  
12 go through each one of  
13 them then. The next is  
14 the practitioner's report  
15 of an IME from a  
16 Dr. Arlene Snyder; the  
17 next is a practitioner's  
18 report of an independent  
19 medical exam from Dr.  
20 Belmonte; the next is a  
21 practitioner's report of a  
22 request for information or  
23 response to a request  
24 regarding an independent  
25 medical exam, looks like

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1 A. Winship  
2 it's Charles Rihanna; the  
3 next is a Tier Orthopedics  
4 Associates' report from  
5 6/23/2010; the next group  
6 of documents appears to be  
7 the reports from Tier  
8 Orthopedics Associates;  
9 the first is dated  
10 4/20/2010, the last is a  
11 report from Lourdes  
12 Diagnostic Imaging; the  
13 next group of documents is  
14 from Southern Tier Pain  
15 Management Center in  
16 Vestal, New York; the  
17 first document dated 6/7  
18 of 10, and they're grouped  
19 together. The next group  
20 of documents is from the  
21 Center for Pain Relief,  
22 date of visit 6/2/09,  
23 dictated by David  
24 Kammerman. The next  
25 packet of medical records



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1 A. Winship  
2 is from United Health  
3 Services Medical  
4 Rehabilitation, the  
5 physician is Gary  
6 Williams, it's a discharge  
7 summary. And that is the  
8 packet of medical  
9 documentation that was  
10 sent. There is other  
11 documents there are going  
12 to be made exhibits later  
13 on, but this is the  
14 medical records that were  
15 sent to me by Mr. Gaji as  
16 being the records that  
17 were reviewed by Mr.  
18 Winship for this  
19 deposition.

20 MR. GAJI: I believe we  
21 also provided supplemental  
22 medical records.

23 MS. HENRY: You did,  
24 and that's exactly what we  
25 were just referencing that



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1 A. Winship

2 we would be getting to in  
3 a minute.

4 MR. GAJI: Okay. Thank  
5 you.

6 BY MS. HENRY:

7 Q All right. Back to your statement,  
8 certain assumptions were made  
9 regarding Mr. Verrochio's residual  
10 functioning capacity and the ability  
11 based on medical records reviewed and  
12 his past work history.

13 What assumptions did you make in  
14 rendering your opinion in this case?

15 A The assumptions were that  
16 Mr. Verrochio had performed the job  
17 that I had identified.

18 Q Which job is that?

19 A The sales route driver, and that he  
20 had performed it and met all the  
21 requisite specific vocational  
22 preparations pertaining to that job.

23 Q In the past?

24 A Yes. And there were two assumptions  
25 that I made relative to Mr.

Alan C. Winship

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1

A. Winship

2

Verrochio's post-injury capacity. One  
3 was that he is not able to perform any  
4 type of work, and the other is that he  
5 is able to perform light duty work  
6 using mainly the right upper  
7 extremity.

8

Q Just so I'm understanding you, an  
9 assumption that you made, is that an  
10 assumption you made or is that a  
11 conclusion from your report, that he  
12 could not perform any gainful  
13 employment?

14

A Those were the assumptions that I made  
15 that led to my conclusion.

16

Q Okay. How did you come to that  
17 particular assumption?

18

A The review of the medical records.

19

Q Okay. And when you say that he can  
20 perform light duty work, that was an  
21 assumption that you made as well, is  
22 that what you said?

23

A I said that he is able to perform  
24 light duty work using predominantly  
25 the right upper extremity.

Alan C. Winship

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1 A. Winship

2 Q And that would be -- that assumption  
3 would pertain to his status in  
4 September of 2007; is that correct?

5 A Correct.

6 Q Okay. Do you have any opinion --  
7 well, actually on page fourteen of  
8 your report, the last paragraph says,  
9 in my professional opinion, Gabriele  
10 Verrochio is not capable of sustaining  
11 any gainful employment based on the  
12 exertional and non-exertional  
13 impairments that Mr. Verrochio  
14 continues to experience. Now, that is  
15 your conclusion from this report,  
16 correct?

17 A Correct.

18 Q And that is based on the assumptions  
19 that were made based on your review of  
20 the medical records up until that  
21 date, correct?

22 A That's correct.

23 Q Okay. And you also -- the last  
24 sentence says, Mr. Verrochio will not  
25 be capable of sustaining gainful

Alan C. Winship

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35

1 A. Winship

2 employment in the future; is that

3 correct?

4 A That's correct.

5 Q And that is your conclusion as well,

6 correct?

7 A That's correct. That conclusion is

8 relevant to the date that I provided

9 this report, August 30th, 2010.

10 Q Okay. Do you have any opinions as to

11 whether Mr. Verrochio was capable of

12 lifting up to seventy-five pounds

13 anytime between 2007 and the date of

14 your report, August 30th, 2010?

15 A Without straying into the medical

16 area, it would be fairly clear from my

17 interpretation of the records that he

18 was not able to lift seventy-five

19 pounds.

20 Q Okay. Do you have an opinion based on

21 review of the medical records of

22 whether Mr. Verrochio would have the

23 full range of motion in both of his

24 arms at anytime between September 2007

25 and the date of your report, August



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1 A. Winship

2 30th, 2010?

3 A Full range of motion relative to what?

4 Q To driving a commercial vehicle.

5 A Yeah. I don't think that his range of  
6 motion would have precluded him from  
7 driving a vehicle.

8 Q The range of motion of both of his  
9 arms would not have precluded him from  
10 driving a commercial vehicle?

11 A No.

12 Q Are you familiar with the Department  
13 of Transportation requirements for  
14 driving a commercial vehicle?

15 A I am.

16 Q Okay. What kind of range of motion do  
17 they require in the arms?

18 A Specific range of motion measurement?

19 Q If you've got specific ones, that's  
20 great, otherwise what is your  
21 awareness?

22 A Well, you have to be able to hold the  
23 -- you have to be able to demonstrate  
24 the capacity to hold your hands on a  
25 steering wheel at ten o'clock and two

Alan C. Winship

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1 A. Winship

2 o'clock position or a four o'clock and  
3 eight o'clock position.

4 Q Do the commercial vehicle driving  
5 requirements require any specific  
6 abilities with regards to shifting  
7 gears and turning and range of motion  
8 in that regard?

9 A Yes. Certainly you'd have to be able  
10 to obviously move your hands on the  
11 wheel and reach for the shifter, the  
12 gear shift.

13 Q Is that more strenuous than a regular  
14 vehicle?

15 A I guess it would depend on the vehicle  
16 you're driving. Most of the trucks  
17 now are power assist. The shifting is  
18 done with the right hand. He doesn't  
19 have an impairment with the right  
20 hand, his impairment is with the left.  
21 I'm sorry, he does have right shoulder  
22 impairment too.

23 Q Do you have an opinion whether Mr.  
24 Verrochio would qualify under the DOT  
25 standards to drive a commercial

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1 A. Winship

2 vehicle today?

3 A No, he would not.

4 Q Okay. But your opinion is that he  
5 could have at some point between  
6 September of 2007 and August 30th of  
7 2010?

8 A I don't recall stating that.

9 Q Okay. Well, let me ask you that  
10 question. Could Mr. Verrochio have  
11 qualified to drive a commercial  
12 vehicle at any point in time between  
13 September 2007 and August 30th of  
14 2010?

15 A By commercial vehicle, you're talking  
16 about a tractor-trailer truck?

17 Q I'm taking about --

18 A A commercial delivery truck?

19 Q A commercial delivery truck.

20 A No, he could not.

21 MS. HENRY: Okay. I'm  
22 going to pass you what has  
23 been provided to me as an  
24 addendum report and it  
25 will be Exhibit 8.

Alan C. Winship

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5 BY MS. HENRY:

6 Q Mr. Winship, if you will review this  
7 and let me know if in fact that is a  
8 copy of an addendum report that you  
9 generated in this case?

10 A It is.

11 Q And the date on this report is  
12 November 23rd, 2010; is that correct?

13 A That's correct.

14 Q And the first sentence says, at your  
15 request, and I assume you're speaking  
16 to Mr. Gaji, correct?

17 A That's correct.

18 Q At your request additional medical  
19 records and Social Security  
20 determination were reviewed. And just  
21 to be sure for the record, when you  
22 went through this report you outlined  
23 the review of the additional medical  
24 records you reviewed, and one of them,  
25 the first one, was November 1st 2010,



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1 A. Winship

2 a note from Dr. Angela Crawford; is  
3 that correct?

4 A Yes, it is.

5 Q And the second one on the second page  
6 is a note from November the 3rd, 2010  
7 from Gary Williams; is that correct?

8 A Yes.

9 Q Okay. And a little further down the  
10 page it says, on November the 3rd,  
11 2010 Matthew Bennett offered the  
12 follow opinion, and that's something  
13 you reviewed as well, correct?

14 A I did, yes.

15 Q Okay. The last paragraph on the page  
16 says, on November 11th, 2010 Dr. David  
17 Kammerman offered the following  
18 opinion; is that correct?

19 A Yes.

20 Q And then on page three, the last  
21 paragraph before the impression  
22 section, it says, I also reviewed a  
23 copy of the Social Security  
24 Administration decision of March the  
25 26th, 2010 awarding Mr. Verrochio

Alan C. Winship

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1 A. Winship  
2 Social Security Disability benefits;  
3 is that correct?  
4 A Yes, it is.

4 A Yes, it is.

5 MS. HENRY: Okay. I'm  
6 now going to mark for the  
7 record what is going to be  
8 Exhibit 9 and it is for  
9 your benefit, Mr. Gaji and  
10 Mr. Kilker. It is a copy  
11 of the letter sent to me  
12 by Mr. Gaji, dated  
13 November 23rd, 2010, where  
14 it lists -- it says  
15 thirteen, but there are  
16 actually fourteen items  
17 that were produced in the  
18 packet that is the  
19 exhibit. I am only  
20 including numbers nine  
21 through fourteen because  
22 the additional medical  
23 records are something that  
24 was already marked in this  
25 case as Exhibit 7.



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1 A. Winship

2 (At which time, Exhibit 9, Copy of  
3 letter dated November 23, 2010 sent  
4 by Mr. Gaji, was marked for  
5 identification.)

6 BY MS. HENRY:

7 Q Mr. Winship, I'm going to give you  
8 that Exhibit 9 to review, and if you  
9 will look at the documentation that  
10 was provided to me and let me know if  
11 these are the medical records that you  
12 considered and described in your  
13 addendum report.

14 A They are.

15 Q Okay. Do you have a copy of what was  
16 supplied to you as the Social Security  
17 Administration decision of March 26th,  
18 2010?

19 A Yes.

20 Q Okay. May I ask you to get that out  
21 because I never received a copy of  
22 that from Mr. Gaji. Well, what we can  
23 do is make it a late filed exhibit and  
24 that will give you some time off the  
25 record to look for it if you need to.

Alan C. Winship

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1 A. Winship

2 That would be Exhibit 10. And in  
3 generating this addendum report, are  
4 these records the only additional  
5 records that you considered in this  
6 report?

7 A Yes.

8 Q Okay. And does your opinion -- does  
9 this addendum report change your  
10 opinion as you previously testified to  
11 in this deposition about Mr.  
12 Verrochio?

13 A No.

14 MS. HENRY: Okay. I  
15 don't have any further  
16 questions.

17 MR. GAJI: Okay. Thank  
18 you.

19 MS. HENRY: We'll have  
20 these exhibits marked.

21 (At which time, Exhibit 4, DOT job  
22 description, was marked for  
23 identification.)

24 (At which time, Exhibit 5,  
25 Detailed job specialty report, was

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1 Alan C. Winship

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5 C E R T I F I C A T E

6 STATE OF \_\_\_\_\_ :

7 COUNTY/CITY OF \_\_\_\_\_ :

8 Before me, this day, personally  
9 appeared Alan C. Winship, who, being duly sworn,  
10 states that the foregoing transcript of his/her  
11 Deposition, taken in the matter, on the date,  
12 and at the time and place set out on the title  
13 page hereof, constitutes a true and accurate  
14 transcript of said deposition.

15 \_\_\_\_\_  
16 Alan C. Winship  
17

18 Signed and subscribed to before me  
19 this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.  
20 \_\_\_\_\_

21 NOTARY PUBLIC, STATE OF NEW YORK  
22  
23  
24  
25

Alan C. Winship

January 6, 2011

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1

## I N D E X

## 2 TO TESTIMONY

3

4 WITNESS BY PAGE  
5 ALAN C. WINSHIP MS. HENRY 4

## 6 TO EXHIBITS

7

EXHIBIT DESCRIPTION PAGE  
8 1 Copy of original Vocational 7  
Evaluation

9

10 2 Letter from Mr. Gaji to Dr. 21  
Gary Williams

11

12 3 Mr. Verrochio's personnel 22  
file

13

14 4 DOT job description 43

15

16 5 Detailed job specialty 44  
report

17

18 6 Wage Earnings 27

19

7 Complete packet of Mr. 28  
Verrochio's medical records

20

21 8 Addendum Report 39

22

23 9 Copy of letter dated 42  
November 23, 2010 sent by  
Mr. Gaji

24

25

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1

2 TO EXHIBITS (cont'd)

| 3 EXHIBIT | 4 DESCRIPTION                                                              | 5 PAGE |
|-----------|----------------------------------------------------------------------------|--------|
| 10        | Copy of Social Security<br>Administration decision<br>dated March 26, 2010 | 44     |

6

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4 CERTIFICATE

5 I, DEBORAH DELELYS, a Court Reporter  
6 and Notary Public in and for the State of New  
7 York, do hereby certify that I recorded  
8 stenographically the proceedings herein at the  
9 time and place noted in the heading hereof, and  
10 that the foregoing transcript is true and  
11 accurate to the best of my knowledge, skill and  
12 ability.

13 IN WITNESS WHEREOF, I have hereunto  
14 set my hand.

15  
16   
17 DEBORAH DELELYS